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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : George M. Alleman, Jr. et al  
For : ALL-TERRAIN UNDERCARRIAGE  
Serial No. : 09/411,106  
Filed : October 4, 1999  
Group Art Unit : 1725  
Examiner : Colleen P. Cooke  
Our Docket No. : L-12396

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REPLY BRIEF

Asst. Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This is a Reply Brief to the Answer filed by the Examiner on June 5, 2002.

I. NON-CONTESTED MATTERS

Appellants have noted that the Examiner agreed with the statements made concerning the Real Party in Interest, the Related Appeals And Interferences, the Claims Appealed, and the Prior Art of Record. The Examiner did not make any statement concerning the Summary of the Invention, thus Appellants assume the Examiner agrees with the summary.

The Examiner corrected Appellants' statements concerning the Status of the Claims and the Status of Amendments After Final. The Examiner correctly indicated that claim 51 had been canceled by Appellants. Appellants asserted in the Revised Appeal Brief that the above-identified

Date of Signature

06-18-02

R.C.B.

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patent application presently contained claims 1-31, 48-61, 71-75, and 82. Appellants further stated that on January 29, 2001 an Amendment was filed in response to an Office Action dated January 16, 2001 which canceled claims 32-47. Actually, claims 32-47 and 51 were canceled without prejudice. The Appendix of Claims filed with the Revised Appeal Brief did not include claim 51. Appellants apologize for any confusion with respect to this matter.

## **II. THE GROUPING OF CLAIMS**

The Examiner commented on Appellants' grouping of the claims. Appellants stated that the claims do not stand and fall together and considered the rejected claims to be separately patentable from one another. The Examiner asserted an arbitrary grouping of the claims, which grouping was not supported by the Revised Appeal Brief. For purposes of clarification, the following claim grouping should be used in this Appeal:

Group 1 - Claims 1, 5, 9, 22, 24 and 71

Group 2 - Claims 2 and 72.

Group 3 - Claim 3.

Group 4 - Claims 4 and 6.

Group 5 - Claim 7.

Group 6 - Claims 8 and 10.

Group 7 - Claim 11.

Group 8 - Claim 12.

Group 9 - Claim 13.

Group 10 - Claim 14.

Group 11 - Claim 15.

Group 12 - Claim 16.

Group 13 - Claim 17.

Group 14 - Claim 18.

Group 15 - Claim 19.

Group 16 - Claim 20.

Group 17 - Claims 21, 23 and 25.

Group 18 - Claim 26.

Group 19 - Claim 27.

Group 20 - Claim 28.

Group 21 - Claim 29.

Group 22 - Claim 30.

Group 23 - Claim 31.

Group 24 - Claims 48, 49, 50, 52, 53, 54, 55, 57 and 73.

Group 25 - Claim 56.

Group 26 - Claim 58.

Group 27 - Claim 59.

Group 28 - Claim 60.

Group 29 - Claim 61.

Group 30 - Claims 74 and 82.

Group 31 - Claim 75.

### **III. THE NON-ENTRY OF PROPOSED AMENDMENT FOR APPEAL**

The Examiner stated that the statement of The Issues was correct except for the arguments

relating to the non-entry of the Proposed Amendment for Appeal. The Examiner asserted that the non-entry of the Amendment for Appeal was a petitionable matter that was not appealable citing MPEP §1002 and §1201.

The amendment filed by Appellants was filed pursuant to 37 C.F.R. §1.116. Appellants have not found any reference to Rule 1.116 amendments in MPEP §1002 or §1201. However, MPEP §1201 does acknowledge that certain petitionable matters may not be timely resolved by the time the Board decides an appeal. Indeed, a similar situation exists in the present case. Appellants filed an amendment to the claims after receiving a final rejection and after filing a Notice of Appeal. Such an amendment is proper pursuant to 37 C.F.R. §1.116. Pursuant to 37 C.F.R. §1.192, Appellants were required to file an appeal brief within two months of filing the Notice of Appeal. The Examiner's assertion that Appellants must petition the Examiner's refusal to enter the amendment is unjust and does not provide Appellants an opportunity to place the claims in better form for appeal and to argue the patentability of such claims to the Board. The Examiner's requirement that Appellants file a petition would create confusion as to the claims at issue on appeal, since the petition will likely not be decided prior to the Board deciding the unamended claims on appeal. MPEP §1201 recognizes this procedural problem and allows the Board to decide issues on appeal that may otherwise be typically resolved by a petition.

Appellants reiterate that the Examiner's refusal to enter the amendment was an abuse of discretion which resulted in 1) Appellants not being able to place the claims in better form for appeal and to argue the patentability of such claims to the Board, 2) a delay in deciding the issues on appeal, and 3) additional costs to Appellants to file and prosecute the appeal. The Examiner never explained why mere formal corrections to the claims would not be entered.

MPEP §714.12 states that "amendments complying with objections or requirements as to form are to be permitted after final action in accordance with 37 C.F.R. 1.116(b)." (emphasis added). The proposed amendments to claims 1, 9, 10, 15, 48-50, 52-55, 57-59, 73-75 and 82 merely corrected several grammatical errors in the claims and/or corrected several antecedent basis problems in the claims that were not identified by the Examiner or Appellants prior to the filing of the Notice of Appeal. Such amendments did not add new matter to the claims. These amendments merely placed the claims in better form for purposes of appeal. Appellants attempted to explain the purpose of the amendments in a paper filed on March 11, 2002 and in the Revised Appeal Brief filed April 25, 2002. The Examiner summarily rejected the proposed amendments. Appellants maintain that the proposed amendments to claims 1, 9, 10, 15, 48-50, 52-55, 57-59, 73-75 and 82 do not constitute new matter for at least the reasons detailed in the Revised Appeal Brief. Entry of the Proposed Amendment for Appeal is respectfully requested.

#### IV. NEWLY ALLOWED CLAIMS

The Examiner indicated that the rejection of claims 2, 7, 11, 56 and 75 has been withdrawn, since these claims include allowable subject matter. Claim 56 depends on claim 48 which has been improperly rejected pursuant to 35 U.S.C. §112(1). Claim 75 depends on claim 74 which also has been improperly rejected pursuant to 35 U.S.C. §112, first paragraph. The Examiner did not withdraw the rejection of claims 48 and 75 pursuant to 35 U.S.C. §112, first paragraph; thus, claims 56 and 75 would remain rejected even if rewritten in independent form.

#### V. EXAMINER'S ARGUMENTS

##### A. ISSUES 1-4

The Examiner maintained that claims 48-61 and 73-75 and 82 were rejected under 35 U.S.C.

§112, first paragraph, for including the term "axes." However, the Examiner did not identify claims 76-81 as still being rejected under 35 U.S.C. §112, first paragraph. Appellants assume that the rejection of claims 76-81 under 35 U.S.C. §112, first paragraph has been withdrawn.

The Examiner also did not identify claims 71-73 and 82 as still being rejected under 35 U.S.C. §112, first paragraph, for including the limitation that the center of gravity of the welder lies on or between the axles when the welder is in both the tilted and non-tilted position. Appellants assume that the rejection of claims 71-73 and 82 under 35 U.S.C. §112, first paragraph, has been withdrawn.

The Examiner further did not identify claims 29, 30 and 31 as still being rejected under 35 U.S.C. §112, second paragraph, for including the term "rearwardly rotatable." Appellants assume that the rejection of claims 29, 30 and 31 under 35 U.S.C. §112, second paragraph, has been withdrawn.

Appellants maintain that the rejection of claims 48-61 and 73-75 and 82 under 35 U.S.C. §112, first paragraph, for including the term "axes" is in error and should be withdrawn. The Examiner acknowledged on page 11 of the Answer that the originally filed Specification made reference to the term "axes." Appellants submit that the Examiner has improperly applied the standard for a rejection under 35 U.S.C. §112, first paragraph, as set forth in MPEP §608.01(p) and §702.01, and by the applicable courts.

MPEP §608.01(p) states in part that:

A disclosure in an application, to be complete, must contain such description and details as to enable any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date. *In re Glass*, 492 F.2d 1228, 181 USPQ 31 (CCPA 1974).

The test for sufficiency of support is whether the disclosure of the application relied upon reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter. *Ralston Purina Co. v. Far-Mar-Co, Inc.*, 227 USPQ 177, 179 (Fed. Cir. 1985). In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide in haec verba support for the claimed subject matter at issue. *Fujikawa v. Wattanasin*, 39 USPQ2d 1895, 1904 (Fed. Cir. 1996).

The term "axes" as used in the originally filed Specification and claims, and which is included in several of the claims on appeal, is being used according to its ordinary meaning. Appellants have not argued or asserted that "axes" is being used in any special manner. Consequently, Appellants are at a loss as to why the Examiner has maintained this rejection. As is known in the art, wheels rotate about an axis. The axle of a wheel typically defines the axis of rotation of a wheel. Indeed, *Webster's Ninth New Collegiate Dictionary* (1990) includes the term "axis" as one of the definitions of "axle." (Attachment A). Appellants submit that one skilled in the art knows that the axle of a wheel defines the axis of rotation of the wheel. The Examiner has not provided any evidence to the contrary. Therefore, the rejection of the claims under 35 U.S.C. §112, first paragraph, for use of the term "axes" is improper, even if the originally filed Specification and claims did not use the term "axes." The maintenance of the rejection is even more egregious in view of the fact that the originally filed Specification and claims did include the term "axes," and that such use of the term was based on the ordinary meaning of the word "axes" when used in conjunction with a wheel.

The Examiner argued that the Specification does not provide support for the "axes" being spaced less than about three times the sum of the radii of the front and rear wheels. This is not true.

Originally filed claim 32 included this limitation. Furthermore, the originally filed Specification disclosed that the "axles" of the front and rear wheels were spaced less than about three times the sum of the radii of the front and rear wheels. As stated above, even if the originally filed Specification and claims had not used the term "axes", which it did, one skilled in the art would still understand that the "axes" of the front and rear wheels were spaced less than about three times the sum of the radii of the front and rear wheels.

Appellants maintain that the Examiner has not met his burden of presenting evidence or reasons why a person skilled in the art would not recognize in the disclosure a description of the invention with respect to the term "axes" as used in the pending claims. *In re Gosteli*, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989).

#### B. ISSUE 5

The Examiner asserted that Figure 1 in Karpoff was not relied upon to teach specific dimensions, proportions or measurement, but instead a "rather broad and general relation between parts of an undercarriage - a spacing of '*less than about*' three times the sum of the radii of the front and rear wheel." A similar assertion was made by the Examiner with respect to Sueshinge and Magda.

Appellants disagree that any of the references cited by the Examiner disclose, teach or suggest a spacing of "*less than about*" three times the sum of the radii of the front and rear wheels. As set forth in the Revised Appeal Brief, Karpoff does not include any disclosure as to the spacing relationship between the front and rear wheels. The only information concerning such spacing is visually shown in Figure 1. As previously established, the spacing of the front and rear wheels illustrated in Figure 1 is greater than three times the sum of the radii of the front and rear wheels.



Consequently, any broad and general relationship taught by Karpoff would be that the spacing of the axes or axles of the front and rear wheels is greater than three times the sum of the radii of the front and rear wheels. The opposite conclusion adopted by the Examiner could only have been based on hindsight reconstruction of Appellants' patent application. The same conclusion holds true for the Examiner's use of Sueshinge and Magda. Appellants maintain that the rejection of claim 1 is not supported by the cited art of record.

The Examiner also commented on the rejection of claim 3. The Examiner's arguments are flawed for the same reasons as set forth above with respect to claim 1. Appellants maintain that the rejection of claim 3 is not supported by the cited art of record.

The Examiner did not comment on Appellants' arguments with respect to claims 7 and 8, and claims 11 and 12.

The Examiner commented on the rejection of claim 13. The Examiner admitted that Sueshinge does not disclose the claimed handle. However, the Examiner did not withdraw the rejection. In essence, the Examiner is asserting that it is obvious to have any type of handle, including the specific handle defined in claim 13, in view of the teachings of Sueshinge. Appellants maintain that there is no support for the Examiner's rejection. Indeed, the Examiner even admitted that Sueshinge does not disclose the handle defined in claim 13.

The Examiner also commented on the rejection of claim 16. The Examiner asserted that the push bar of Magda could be the lift bar as defined in claim 16. Appellants disagree as set forth in the Revised Appeal Brief. Even if the Examiner were correct in such assertion, which he is not, the Examiner's argument would not make obvious claim 18. Claim 18 depends on claim 15 which in turn depends on claim 14. Claim 14 defines the push bar as including a base section, a middle

section and a handle section. Claim 16 requires the push bar to also include a lift bar. Magda only discloses a push bar which the Examiner asserts is a lift bar. Magda does not disclose, teach or suggest a push bar that includes a handle and some other structure that can be used as a lift bar. Appellants maintain that there is no support for the Examiner's rejection, especially with respect to claim 18.

The Examiner further commented on the rejection of claim 26. The Examiner asserted that the teachings of Sueshinge, which discloses the use of front and rear wheels, and the teachings of Magda concerning a push bar make obvious the limitation that the side flanges include at least three axle openings. Appellants do not understand the Examiner's logic or argument. The Examiner acknowledges that neither Sueshinge nor Magda disclose a side flange that includes at least three axle openings. Therefore, it is not apparent why the Examiner would conclude that Sueshinge and Magda support an obviousness rejection of claim 26. The only teaching of a side flange that includes at least three axle openings is from Appellants' own disclosure. Appellants maintain that there is no support for the Examiner's rejection of claim 26.

The Examiner also commented on the rejection of claim 29. The Examiner argued that the cart of Karpoff can be fully tilted and maintain the center of gravity of an object on the cart between the axles of the cart. The Examiner's statement is not supported by any disclosure in Karpoff. Appellants maintain that there is no support for the Examiner's rejection of claim 29.

The Examiner's final comments were directed to Magda and Momberg as being analogous art. The invention is directed to undercarriages that can support a power supply or welder. These undercarriages are specially designed to safely and properly transport a power supply or welder. Consequently, this is a specialized technology. One skilled in the art of welders and/or power

supplies would not look to the general art of carts to glean answers for designing an improved undercarriage for a power supply or welder. The Examiner has not sufficiently established that one of ordinary skill in the art would view Magda as analogous art for undercarriages for power supplies or welders. Appellants maintain that Magda is not proper art to be used to support an obviousness rejection of the claims pending in the above-identified patent application. The use of Momberg to support an obviousness rejection is even more egregious. Momberg does not even pertain to a cart, much less an undercarriage for a power supply or welder. The Examiner asserts that Momberg teaches the storage of an electrical cord on a vacuum cleaner. Appellants submit that coffee makers also teach the storage of an electrical cord; however, Appellants maintain that coffee makers, like vacuum cleaners, are not prior art that one skilled in the art would consider when attempting to design an improved undercarriage for a power supply or welder. Appellants maintain that Momberg is not proper art to be used to support an obviousness rejection of the claims pending in the above-identified patent application.

**C. ISSUE 6**

The Examiner did not comment on claims 19-21 which were rejected under 35 U.S.C. §103(a) as being unpatentable over Karpoff in view of Sueshige and Magda, and further in view of Momberg.

**D. ISSUE 7**

The Examiner briefly made reference to claims 48, 74 and 61. No mention was made by the Examiner with respect to claims 49, 50, 52, 54, 56, 57 and 75. The Examiner asserted that claims 48 and 74 were rejected for reasons similar to the rejection of claim 1. Appellants submit that the Examiner's rejection is defective for at least the reasons stated above relating to the patentability of

claim 1, and is also defective for the reasons set forth in the Revised Appeal Brief. The Examiner also asserted that claim 61 is rejected for the same reasons as claim 16. Appellants submit that the Examiner's rejection is defective for at least the reasons stated above relating to the patentability of claim 16, and is also defective for the reasons set forth in the Revised Appeal Brief.

**E. ISSUE 8**

The Examiner did not comment on claims 53, 55, and 58-60 which were rejected under 35 U.S.C. §103(a) as being unpatentable over Karpoff in view of Magda, and further in view of Sueshige.

**VI. SUMMARY AND CONCLUSION**

Appellants reassert that the claims on appeal pertain to an undercarriage for use with a power supply and/or an arc welder. The prior art references of Karpoff, Sueshige, Magda, and/or Momberg do not disclose, teach or suggest the undercarriage defined in the pending claims.

Appellants respectfully request that the rejections to the pending claims be withdrawn and the claims be indicated as allowable.

Respectfully submitted,  
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